

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID LYNN BAILEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:16CV457
	)	1:09CR306-1
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

On October 20, 2016, the United States Magistrate Judge's Recommendation was filed and notice was served on Petitioner pursuant to 28 U.S.C. § 636. Petitioner filed objections (Doc. 125) to the Recommendation within the time limit prescribed by Section 636.

The court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation (Doc. 123), which is affirmed and adopted.

As this court previously instructed Petitioner by Order dated May 23, 2014, to the extent Petitioner makes claims challenging his conviction or sentence based on claims of a breach of an alleged promise that induced his plea or challenging the voluntariness of his plea, he must proceed under § 2255 and file the claim using the proper forms for § 2255 claims. If Petitioner

wants to pursue a motion to compel a Rule 35(b) motion, he may file such a motion but should not include challenges to his conviction or sentence, and must make a substantial threshold showing, as previously set out in the May 23, 2014 Order.

IT IS THEREFORE ORDERED that Petitioner's Motion (Doc. 122) is DISMISSED *sua sponte* without prejudice to Petitioner promptly filing a corrected motion on the proper § 2255 forms. Finding neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability is DENIED.

/s/ Thomas D. Schroeder  
United States District Judge

February 27 , 2017